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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

### Division of Water Rights

MICHAEL R. STYLER  
Executive Director

KENT L. JONES  
State Engineer/Division Director

FEB 05 2015

## ORDER OF THE STATE ENGINEER

### For Permanent Change Application Number 55-1374 (a40154)

Permanent Change Application Number 55-1374 (a40154) in the names of Steven and Andrea Zolman, was filed on September 5, 2014, to change the point of diversion, place of use, and uses of 0.55 cubic foot per second (cfs) of water as evidenced by Water Right Number 55-1374. Heretofore, the water has been diverted from a surface source located: (1) South 1572 feet and East 38 feet from the N $\frac{1}{4}$  Corner of Section 18, T4S, R2E, SLB&M. The water has been used for the irrigation of 5.68 acres from April 1 to October 31; and year-round stockwatering of 3.0 equivalent livestock units (ELUs) in cattle, horses, or equivalent species. The water has been used in portions of Section 18, T4S, R2E, SLB&M.

Hereafter, it is proposed to divert 0.55 cfs or 22.804 acre-feet of water from points of diversion changed to: (1) Surface - North 500 feet from the W $\frac{1}{4}$  Corner of Section 8, T4S, R2E, SLB&M; (2) Surface - North 235 feet from the W $\frac{1}{4}$  Corner of Section 8, T4S, R2E, SLB&M; (3) Surface - South 1140 feet and East 890 feet from the NW Corner of Section 8, T4S, R2E, SLB&M; and (4) Surface - North 1100 feet and East 585 feet from the W $\frac{1}{4}$  Corner of Section 8, T4S, R2E, SLB&M. The water is to be used for the irrigation of 5.701 acres from April 1 to October 31. The place of use of the water is being changed to portions of Section 8, T4S, R2E, SLB&M.

Notice of the application was published in The Daily Herald on September 25 and October 2, 2014, and protests were received from Alpine City Corporation and Alpine Irrigation Company. A hearing was not held.

Alpine Irrigation Company and Alpine City Corporation are concerned moving the point of diversion to another location could impact their nearby water rights and request the State Engineer protect against any adverse impacts this change application might cause.

Alpine City's School House Springs historical points of diversion originate at the same historical location as the application. The applicants propose to move to new point of diversions above the historical location, and thereby minimize potential impacts.

Prior to requesting this change application, the applicants submitted a Statement of Group Contribution for the Supplemental Group Numbers for the underlying water right the change application is based upon. The State Engineer reviewed the flow rates and documents in the file for Water Right 55-1374 and concluded the right had a sole supply of 5.68 acres of irrigation and 3 ELUs supplemental with Water Rights 55-969 and 55-6222, which also belong to the applicant. A hydrologic analysis was performed as shown below which demonstrates the proposed depletion will not exceed the historical depletion.

In evaluating applications that propose to change the nature of use of a water right, the State Engineer believes it is appropriate to examine the rates and amounts of hydrologic depletion associated with the historical water use as compared to the proposed use to assure that there is no enlargement of the underlying water right. In this case, it is believed that the historical water uses would have incurred the following rates and amounts of hydrologic depletion:

<u>Prior Beneficial Use</u>	<u>Allowed Diversion</u>	<u>Rate of Depletion</u>	<u>Amount of Depletion</u>
Irrigation: 5.68 acres	22.72 acre-feet	53.81% <sup>1</sup>	12.226 acre-feet
Stockwatering: 3.0 ELUs	0.084 acre-foot	100%	0.084 acre-foot
Total	22.804 acre-feet		12.31 acre-feet

The application proposes the following uses:

<u>Proposed Beneficial Use</u>	<u>Allowed Diversion</u>	<u>Rate of Depletion</u>	<u>Amount of Depletion</u>
Irrigation: 5.701 acres	22.804 acre-feet	53.81% <sup>1</sup>	12.271 acre-feet

It appears this change can be made provided certain precautions are observed.

Utah Code Ann. §73-3-3(2)(a) states any person entitled to the use of water may, through the change application process, make a permanent change to an existing water right. Additionally, §73-3-3(5)(a) directs the State Engineer to follow the same procedures for a permanent change application as provided by statute for applications to appropriate water. The State Engineer must approve a change application if it meets the provisions of §73-3-3 and criteria listed in §73-3-8(1). §73-3-30(7)(a) states the State Engineer may not reject a permanent change application for the sole reason the change application would impair a vested water right; therefore, this application appears feasible provided certain conditions are met.

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and/or no enlargement occurs.

It is, therefore, **ORDERED** and Permanent Change Application Number 55-1374 (a40154) is hereby **APPROVED** subject to prior rights and following conditions:

- 1) This change application is limited to the annual diversion of 22.804 acre-feet of water to be used for the irrigation of 5.701 acres from April 1 to October 31.

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<sup>1</sup> Consumptive Use of Irrigated Crops in Utah," Research Report 145, Utah Agricultural Experiment Station, Utah State University, Logan, Utah, October 1994, Table 25" Pleasant Grove Station. The benchmark crop for the referenced calculation is alfalfa, the most typical and consumptive crop evaluated in the study, is 25.83-inches, 2.15 feet or 53.81%.

- 2) To accommodate the approval of this permanent change application, the use of 22.804 acre-feet of water for the irrigation 5.68 acres and year-round stockwatering of 3.0 equivalent livestock units (ELUs) in cattle, horses, or equivalent species must cease.

The State Engineer has statutory responsibility to create and maintain water right records based on an administrative process outlined in statute. The State Engineer is not authorized by statute to adjudicate water right title or the validity of established water rights. It is noted that failure to exercise a water right within the statutory period could render all or a portion of a water right invalid through forfeiture. Parties who wish to challenge the validity of a water right are advised that a declaration of forfeiture is a judicial action and the courts are available to pursue such suits. (UCA 73-1-4).

As noted, this approval is granted subject to prior rights. The applicants shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.

Inasmuch as this application proposes to divert water from a surface source, the applicants are required to contact the Stream Alteration Section of the Division of Water Rights at 801-538-7240 to obtain a Stream Alteration permit in addition to this Permanent Change Application.

The applicants are strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicants to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or before February 29, 2020, or a request for extension of time must be acceptably filed and subsequently approved; otherwise the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicants.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses, and extent of your water right. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicants must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

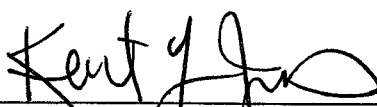
Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application.

**It is the applicants' responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.**

Your contact with this office, should you need it, is with the Utah Lake/Jordan River Regional Office. The telephone number is 801-538-7240.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 5<sup>th</sup> day of February 2015.

  
Kent L. Jones, P.E., State Engineer

Mailed a copy of the foregoing Order this 5<sup>th</sup> day of February 2015 to:

Steven and Andrea Zolman  
c/o John Barlow, Esq.  
9 Exchange Place, Suite 600  
Salt Lake City, UT 84111

Alpine Irrigation  
86 East 100 South  
Alpine, UT 84004

Alpine City Corporation  
20 North Main  
Alpine City, UT 84004

Division of Water Rights  
Stream Alteration Section

BY: 

Sonia R. Nava, Applications/Records Secretary